

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**

**May14, 2013**

**4:00 P.M.**

**CALL TO ORDER:**Mr. John Stetler,Chairpersoncalled meeting to order at 4:00 P.M.

**ATTENDANCE:**

**Members Present:** Rick Barnes                      Becky Squires  
                         Deland Davis                      Carlyle Sims  
                         Greg Dunn                      John Stetler  
                         Sharon Heisler

**Members Excused:** James Moreno

**Staff Present:** Jill Steele, DeputyCity Attorney  
                         Marcel Stoetzel, City Attorney Ofc.  
                         Christine Hilton, Planning Supervisor  
                         Glenn Perian, Senior Planner  
                         Leona Parrish, Admin. Assistant, Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:**None

**CORRESPONDANCE:**Mr. James Moreno was unable to attend today's meeting; he submitted an email noting his opposition to Mr. Christian's appeal based on the staff report and recommendations.

**OLD BUSINESS:**None

*Mr. John Stetler, Chairperson stated the meeting procedure would be the same as when Mr. Christian last attended where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.*

**NEW BUSINESS:**

**A) Zoning Use Variance Appeal #Z-03-13:**

Petition from R.B. Christian & Son, Inc., Mr. Richard B. Christian, 439 W. Columbia Avenue. Battle Creek, MI 49015. Request is for a Use Variance to allow two(2) residential apartments on a property zoned "C-3 Intensive Business District"; also known as: 439 W. Columbia Avenue (Parcel #6460-11-468-0); application is requested pursuant to Planning and Zoning Code, Chapter 1264.03.

Mr. Glenn Perian, Senior Planner, Planning Department; outlined the report stating the petitioner came before the Zoning Board in December of 2012, appealing a decision of the Zoning Administrator. At that meeting the Zoning Board made a ruling and determined that the Zoning Administrator acted properly in denying a two-unit residential use at the property located at 439 W. Columbia Avenue as they were not a legal non-conforming use. That question has been answered and the time period to appeal the Zoning Board's December decision has lapsed. Based on the Zoning Board's decision in December, the appellant is now requesting a use variance to allow two residential units on the property, contrary to those uses permitted in the C-3 zoning district and outlined in Chapter 1264 of the Planning and Zoning Code.

Mr. Perian said the Planning staff has reviewed all the information submitted by the appellant and does not believe that each condition in Chapter 1234.04 of the Planning and Zoning Code has been met for the Zoning Board to approve the use variance requested in this appeal. Staff believes the building, structure and land *can* be reasonably used in a manner consistent with the uses allowed in the C-3 zoning district in which the property at 439 W. Columbia is located. Furthermore, on December 11, 2012, the Zoning Board determined that the building was entirely used for an office use, demonstrating that the building can and, in fact, has been used consistent with the permitted uses in the C-3 zoning district.

Mr. Perian noted the applicant had not provided anything in the application packet to show unique conditions associated to the property. Exceptional topographic conditions or other extraordinary situations on the land do not exist. Furthermore, the Zoning Board determined at the December 11, 2012 meeting that the building had been altered without the proper permits and the residential apartments were not considered a legal non-conforming use of the building.

Mr. Perian stated that staff finds the proposed residential use, if granted, in fact would alter the essential character of the neighborhood, or the intent of the Master Plan, by allowing mixed commercial and residential uses in the C-3 zone, which is not permitted by the Planning and Zoning Code. Staff stated it was previously determined by the Board that the property was not legally converted to its current residential uses. Staff sees no reason as to why the property could not be restored to a condition suitable for a use permitted in the C-3 zoning district and for these reasons the planning staff is recommending denial of appeal Z-03-13.

Mr. Perian said he would like to remind the Board that the Appeal request for today is to determine if the appellant has met the test for a use variance. As mentioned previously, the question of nonconforming status of the existing residential uses was discussed at the December 2012 meeting, a determination was made, and the time period to appeal that Zoning Board decision has lapsed.

Mr. John Stetler asked if Mr. Perian could be more specific of what uses may be allowed at this location without being an unnecessary hardship. Mr. Perian stated any uses that are identified under permitted uses in the following zoning districts: "C-3 Intensive Business"; "C-2 General Business"; "C-1 Neighborhood Commercial". Mr. Perian noted some of those uses are as follows: Any Retail Business; Motor Vehicle, Trailer & Boat Display, Sales & Rental; Motor Vehicle Repair; Drive-in Businesses; Second-hand Stores; Freezer Lockers for Retail Business; Restaurants; Dyeing & Cleaning Works; Hotels & Motels; Laundries; Printing Shops; Recreation & Amusement Activities; Theaters; Radio Broadcasting & Telecasting Stations; Studios; Offices & Telecommunications Exchange Buildings; Veterinary or Animal Hospitals; Bakeries; Banks; Catering Business; Filling

Stations; Hospitals & Clinics; Restaurants; Stores for Retail Business; Service Stores; General & Professional Offices; Funeral Homes; Business Schools & Colleges; Nonprofit, Noncommercial. Quasi-public & Public Uses; Bed & Breakfasts, Music Studios & Photographic Galleries and Florists.

Mr. Mike Lind, JD, Attorney at Law, 391 South Shore Drive, Suite 318, Battle Creek, MI came forward to speak on behalf of his client and property owner Mr. Christian. Mr. Lind stated he had read the recommendations and hopes he is not speaking to a wall and asked the zoning board to have an open mind and hear what he has to say. Stated it would be a problem in denying this variance as it would be a great financial problem to Mr. Christian, as these apartments have been going on for 50-years from his father to himself and beyond which the information is in your packet also. Said they tried to look to the old Battle Creek Township trustees and zoning people and could not find any persons who could assist them in that endeavor. Stated it was allowed in the township days when it became apartments and has continued on up until Mr. Christian decided he should get a permit, because it was right and proper. Noted that was when they were investigating the permit that they found it was zoned "C-3".

Mr. Lind referenced the maps and noted a few yards away there are residential properties; said he was not sure if they were grandfathered uses or what their circumstances are; noted the condos were built after the time these apartments were being utilized by persons, and now a couple of veterans are now living there and if Mr. Christian is not allowed to continue to lease them, this would grossly effect his bottom line and that his business is not a thriving business that goes on and on and he needs this particular income and has counted on this income as did his father. Stated he they had looked for this to be almost grandfathered in and had searched for persons to come before this board to tell that it was zoned and did allow apartments to be there in the old Battle Creek Township days. but could not find anyone. Stated during the time it has been apartments there has not been any problem and it has existed and co-existed very well with no issues. Mr. Lind asked the board to understand; said it is easy to say no and asked the board to look at why it cannot be used as a residential and asked for a reason not to allow. Noted Mr. Christian needs this income to continue with his business and is a concern for the city; asked the board to work with him to allow and asked why not allow.

Mr. Rick Christian, 52 E. Acacia Blvd., Battle Creek, property owner came forward to speak and stated had not planned on speaking but believes he has a unique situation of being at this location for 42 years as he or his father had bought this property in 1971 with the intent to use for income for the three apartments back when it was the Battle Creek Township. Stated he could not say why his father did not register them as a rental; noted his sister remembers the Battle Creek Township had the Fire Department come there three different times to inspect.

Mr. Christian said he did not understand how one of the board members could say no without being at the meeting; he guessed he was basing his opinion on the reports and made up his mind ahead of time. Stated in the 1950's his neighbor owned this property "Al Canton" and had sold used cars there and he was told that "Al" was the one who made it into three apartments in 1940's, before they purchased the property in 1971 and was allowed by the Battle Creek Township; now after the city merged it is not o.k. because of zoning changes. Said he does not understand when you have tenants there for many years; what is expected for him to do just eject those tenants because of the change in zoning when they have been there since the 1950's.

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION WAS MADE BY MS. BECKY SQUIRES TO APPROVE THE USE VARIANCE REQUEST TO ALLOW TWO(2) RESIDENTIAL APARTMENTS ON A PROPERTY ZONED "C-3INTENSIVE BUSINESS DISTRICT" AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS.**

Discussion:

Mr. John Stetler said he struggling with this because of the structure sitting so far back; thinking it could be a hardship to put it to a "C-3" use, because it is unique where it sits on the land if you were to use for a commercial business.

Ms. Jill Steele, Deputy City Attorney, wanted to remind the zoning board that they are looking for an unnecessary hardship and the unnecessary hardship is; can the property be used with one of the allowed uses for that district. Noted they need to find that before they get to something that is unique. Mr. Stetler said that was what he was questioning; if it was an unnecessary hardship.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ONE IN FAVOR (STETLER); SIX OPPOSED (BARNES, DAVIS, DUNN, HEISLER, SIMS, AND SQUIRES), MOTION FAILED.**

**APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MS. BECKY SQUIRES TO APPROVE THE APRIL 9, 2013 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. CARLYLE SIMS.**

**ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.**

**COMMENTS BY THE PUBLIC:**None

**COMMENTS BY THE MEMBERS / STAFF:**None

**ADJOURNMENT:** Meeting was adjourned at 4:24 P.M.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department